

**APPROVED**

**STATE ADVISORY COUNCIL ON THE EDUCATION OF CHILDREN WITH  
DISABILITIES**

**October 6, 2006  
Carmel Educational Service Center  
Indianapolis, IN**

**ADVISORY COUNCIL MEMBERS PRESENT:**

Karol Farrell, David Geeslin, Kathy Mears, Steve Tilden, Stephanie Beasley, Dawn Downer, James Hammond, Becky Kirk, John Nally, David Schmidt, Julie Swaim, Jane Swiss, Bret Lewis, Gary Bates, Mary Ramos, Cheryl Shearer, Rich Burden; Marcia Johnson, Lilia Tentinty, for Pete Bisbeco, Rebecca Kirby

**ADVISORY COUNCIL MEMBERS NOT PRESENT:**

Christina Endres Bessie Henson, Cathleen Hardy Hansen, Cynthia Diamond, Martha Farris, Sarah Renner

**DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:**

Paul Ash, Nina Brahm, Becky Reynolds

**GUESTS:**

Sharon Knoth

**VISITORS**

Loui Lord Nelson, R.A.I.S.E., Inc.; Susan Lockwood, DOC; Jennifer Akers, Parent

**INTERPRETERS:**

Randy Nicolai, Kellyeane Norrod (a.m.), and Amy Mattern (p.m.)

## **MEETING**

D. Schmidt opened the meeting at 10:42 a.m.

## **MINUTES**

The minutes from the September 8, 2006, meeting was approved as a correct document.

B. Kirk suggested that the discussion for Article 7 be put in the minutes and S. Knoth's mark-up revisions be included in the minutes. B. Marra indicated that this is possible. The minutes will be revised to reflect the more comprehensive format. Motion carried.

## **HOUSEKEEPING**

B. Reynolds apologized for the late submission of the expense reports from the September meeting.

D. Schmidt indicated that there were copies of the ISEAS directory to be picked up at the table in the back of the room.

## **OPENING DISCUSSION**

B. Marra opened the meeting with a brief discussion of the Strategic Plan being written by the Indiana Department of Education. A vision is that there will be a strategic plan for each school that covers all of the required components that the various divisions within the IDOE require. He had to present what the Division of Exceptional Learners (DEL) requires as far as plan components to the team this a.m. That necessitated a one-hour delay and he appreciated everyone's understanding in that regard.

## **PUBLIC COMMENT (Audience comments, if any)**

D. Schmidt indicated that although B. Reynolds sent two comments out to the SAC prior to the meeting there were additional comments received in addition to those comments. D. Schmidt said that there were several print copies on the table in the back of the room and to please be sure to get a copy of those comments and read through them prior to the point in Article 7 where we discuss those topics.

No comments from visitors were made.

## **ARTICLE 7 DISCUSSION**

SAC discussed the following issues:

### **511 IAC 7-18-1 SCOPE**

Bob said we are changing the new rule citation so numbers in Article 7 would be in rule 32 through rule 46. We needed to put in charter schools because there is a different definition by which school corporation defined was by IC 20-18-2-16. It does not include charter schools which is defined at 20-24-1-3 & 4, so we have to put in school corporation and charter schools.

B. Lewis asked if SAC could add a definition of what a home school should consist of or at least what it is that they should accomplish. B. Marra responded that issue would be more of having the state define that in Indiana Code. What Art. 7 would then say is these are the rules responsible for dealing with kids with disabilities in public schools and public agencies and charter schools. Home school kids are considered private school kids and the school corporation has a legal responsibility.

J. Hammond moved to accept the recommended changes. Seconded by J. Swiss. Motion carried.

### **511 IAC 7-18-2 SP. ED. PROG., ORGANIZ. & ADMIN. STRUCTURES**

B. Marra stated that "other public agencies" was added and explained that some of our public agencies still have services.

Bob said that the bottom of page one reads "Have not completed high school graduation requirements or received a diploma. We have given you the options and we will go over it. But here is the data you were given and I will go over it. (See survey)

There were six students in special education who were 22 years old on 12/01/05. The exceptionality areas are as follows:

- 1 MiMH
- 1 MH
- 1 Autism
- 3 SPMH

There were 110 students who were 21 on December 1, 2005, but turned 22 before July 1, 2006.

In addition to the information extracted from the IEMS system, an electronic survey was transmitted to 113 directors via the Indiana Special Education Administrator's Services' (ISEAS') list serve. Responses were received from 35 directors (31%).

One of the survey questions asked the directors how many students age 22 were receiving special education services during the current and previous school years. Responses from the 35 directors responding to this question are set forth below:

- No students aged 22 - 27 directors
- One student aged 22 - 4 directors
- Two students aged 22 - 2 directors
- Three students aged 22 - 6 directors

A follow-up question asked for the respective disabilities of the students aged 22. Responses to this question are set forth below:

- Severe - 3
- Moderate - 3
- Mild - 2
- Multiple - 1
- TBI-VI - 1
- LD - 1
- Autism - 3

Bob instructed that page 3 would add a (b) section and we have three different options:

**(b) A student's right to a free and appropriate public education ends at the conclusion of the semester, trimester, or the school year in which the student turns 22 years of age. However, a public agency must apply the same rule to all students for whom services are terminated because of age.**

Note: Foot note stating 48 high schools that use the trimester

**(b) The student's case conference committee shall determine whether the student will remain in school until the conclusion of the semester, trimester, or the school year in which the student turns 22 years of age.**

**(b) Each public agency shall establish, maintain, and implement written policies and procedures determining when students will leave school after turning 22 years of age.**

S. Beasley asked for clarification on A) Who would decide if it would be the semester or trimester. Bob said that the law would decide that if a child had a birthday on in September and you turned 22 you would get to go to the end of that semester if it ends in September. That it is if the state regulation decides. Red is the case conference decides and purple is the policy of the school decides. Bob said that you have to be consistent with all kids. K. Mears asked for clarification of if the student was able to decide or if the parent was to decide. Bob clarified that it would depend on if the child was emancipated so it would be the parent or the child. John Nally questioned funding for the student to stay in longer. J. Nally stated that he doesn't think that it should state trimester or

semester that it should be for the school year. J. Nally added that their legal obligation doesn't stop until they are 22 and finishes the school year at DOC.

J. Nally continued that he would like it to read that the services end at the conclusion of the school year during which the student turns 22 years of age.

B. Marra read from the Federal regulations that our Free Appropriate Public Education (FAPE) extends from three years of age up to 21 years of age. Our discussions today need to look at what happens to that small percentage of students who turn 22 years of age after the school year has started? Should it be dictated by Article 7, by the case conference committee or by the LEA?

K. Farrell stated that if it is driven by the school policy and embedded in that policy children could exit. How would transportation be part of the regular service? B. Marra said that they would have to provide transportation.

B. Kirk stated her preference is to cross out semester and trimester and should be until the end of the school year. To leave it for case conference would be inappropriate. The case conference could (with parent agreement) stop services at the end of a semester or trimester instead; but the option exists to keep the student in school through the end of the school year should the parent so choose.

M. Johnson questioned child count and if the child could be counted after they turn 22. B. Marra said no. M. Johnson indicated that she prefers that the student's case conference committee should be able to make the determination.

S. Tilden said that the child should be able to finish the school year and the transition and waiting lists would be difficult for the child and parent. The option would be for the parents. S. Tilden indicated that he would like to see the student to be able to finish the school year. Transition planning is difficult and there are oftentimes waiting lists. It is a very small number of students who may not be eligible for funding so it should have a minimal impact on the school's budget to permit the student to remain in school until the end of the school year in which they turn 22 years of age.

L. Teninty indicated that while she understands the perspective that the decision should be individualized and child-specific; the reality is that the case conference outcomes do not always advocate for keeping the child in longer. If you place it on the case conference committee you are actually adding a greater burden for the parent to advocate for the needs of the child. She would prefer it be mandated by state law; knowing that services should be driven by the case conference committee.

D. Downer state that she agrees that that as a state agency, it should be mandated but the parents should have the choice to remove at the age of 22.

S. Beasley said that schools are not going to encourage that the student keep services in tact. Could it be read as to the students unless the parents decide otherwise. B. Marra indicated that yes, the SAC could determine that the student's right to a FAPE concludes at the end of the school year in which the student turns 22 years of age unless the case conference committee determines otherwise.

B. Lewis asked about the numbers presented by the DEL and whether they include "S-5" students. B. Marra indicated that he does not believe the numbers include students served under alternative and residential placements.

K. Farrell said that she thinks that the majority of CCC members make decision that are based on the best interest of the child.

J. Swaim asked if a student left at 18 could they come back after they have left? B. Marra indicated that as long as the child did not receive a high school diploma; services end upon receipt of a diploma (but not a certificate).

Marcia Johnson first motioned for bottom language. "A student's right to a FAPE ends at the conclusion of the school year in which the student turns 22 years of age unless otherwise determined by the case conference committee." Lilia Tentinty seconded.

In favor 12  
opposed 8

Motion passed 12 to 8

### **511 IAC 7-18-3 OTHER PUBLIC AGENCIES SP. ED. PROGRAMS**

Bob noted that the DOC has a department director of special education now. DOC is the responsible LEA. The Fed. Regs. do not require schools to have licensed directors. K. Farrell asked as to whether this will require every charter school to hire a director of special education? B. Marra indicated "no" – they would operate similar to a cooperative.

B. Lewis moved to accept the language. Seconded by M. Johnson. Motion carried unanimously.

Move to approved. Unanimous vote

### **511 IAC 7-18-4 USE OF PUBLIC AND PRIVATE INSURANCE**

B. Marra said aging was removed from DDARS, 'addiction' was added, Indiana School for the Blind and Visually Impaired was edited and then the reference to

charter schools was added. There is nothing that requires an inter-agency agreement to expire at four years. Article 7 was the only place this was added so the suggestion is made to have it removed. B. Kirk questioned why the agencies were not capitalized. B. Marra explained that the drafting manual stipulates that they are not capitalized.

J. Swiss moved to accept the changes in 511 IAC 7-33-3 as made. Seconded by G. Bates.

Motion carried unanimously.

Bob explained the changes for NASDSE and NAME or AASS. All organizations will work with the OSEP to get their verbal interpretation in writing. If we vote on this we want to pass this to OSEP to write in to their interpretation.

511 IAC 7-33-4 – and specifically subsection (4) – benefits is the term the feds are using instead of Medicaid. The language you see in this section was the ‘best thoughts’ on how the feds were interpreting this as of October 5, 2006. When you vote on this section, please know that it may need to be tweaked somewhat as this issue is discussed further and additional clarification is received.

B. Marra stated that schools are not required to bill Medicaid but they are required to sign up. D. Schmidt asked if a lot of schools participate with Medicaid in education. B. Marra said that not many but there are a few that bill Medicaid. B. Kirk asked if they can also bill private. B. Marra said yes. B. Marra made clarification to the Part B money being used to offset costs.

M. Johnson made a motion to accept the changes to 511 IAC 7-33-4 as written.

Seconded by B. Lewis.

L. Teninty cautioned that there are certain health insurance mandates that cover students (such as students who have autism) and some insurance agencies are stipulating in their policy that they will not reimburse for any services covered in the student’s IEP. She would caution that we might have any blanket parental release statements. M. Johnson asked for clarification on these changes as to whether they are aligned with the federal language. B. Marra indicated that all we are trying to do today is get through an initial vote on many of these changes.

J. Hammond asked when would the SAC have an opportunity to revisit this language? D. Schmidt indicated that the SAC will receive the entire revised rule to review and discuss prior to moving it on to the State Board of Education. Motion carried unanimously.

D. Schmidt asked for a vote.

M. Johnson motioned. B. Lewis seconded. All approved.

### **511 IAC 7-20-1 COMPREHENSIVE PLAN**

The issue that was brought forth was a change in the Joint Service and Supply Plan but not a change in the comprehensive plan. JSSPs do not come before the SAC as the board chooses how to distribute the funding they receive. The SAC approves or denies the plan set forth for assuring that every child with a disability will receive a FAPE. The SAC can vote on the language as it is written, choose to table the vote, or ask for additional clarification/language as to what the SAC members would like to see inserted or proposed. J. Swaim indicated if the SAC is going to go through the motion of having districts come before the SAC to have plans approved; she feels the language in this rule needs to be strengthened. B. Lewis moved to approve the language of 511 IAC 7-35-1 be approved as written; seconded by K. Farrell. Motion failed. J. Swaim moved to have the DEL bring this language back to the SAC with more background information and strengthened language as to what can be reviewed and approved by the SAC. Seconded by J. Hammond.

C. Shearer asked where the liability for provision of FAPE would lay. B. Marra indicated FAPE resides with the LEA of residence.

R. Burden indicated that the language for this will be difficult to craft unless we can speak to the joint service plans being written to ensure that any unintended consequences are reviewed.

B. Marra referred to state statute that one of the SAC responsibilities “to recommend approval or rejection of the completed comprehensive plan committed by school corporation acting individually or joint school services programs basis with other school corporation.” So under state statute you give me that approval and I have that final approval according to our legal council to approve or reject their comp plan. So that is in state statute where it directly relates to comprehensive plans.

Unanimous vote. Motion carried. To bring back to discuss comprehensive plan.

### **511 IAC 7-20-2 PROGRAM MONITORING**

B. Marra stated that the word mandate was changed to requirement.

B. Marra explained that the state performance plan was added. Continuous Improvement Monitoring (CIM) equals into the Annual Performance Review (APR) which equals into the State Performance Plan (SPP). We monitor the school corporation that is called the CIMS. We get that data and then we have what we call the APR. Then we look at those indicators and if those indicators

show that we are not on the right track we then write the state performance plan to put us on track for example the least restrictive environment would be a goal.

Parent advisory councils (PACs) were built into this process too. R. Burden asked what the criteria for monitoring local parent involvement looks like. B. Marra indicated it is participation in case conferences, meetings were held at mutually agreed upon times, etc. R. Burden indicated he would like to see strengthened criteria for parental involvement. P. Ash indicated that the PACs are optional but if they do have a PAC there must be procedures for how they are run.

J. Swiss moved to accept the changes in 511 IAC 7-20-2; seconded by K. Farrell. Motion carried.

**Comprehensive System of Personnel Development (CSPD)** has been completely removed from the federal language. B. Marra would like to come back to the SAC on this section at a later date. He has a couple of committees that are working on language for professional development that would be added into a different section of the rule. Also highly qualified (HQ) and the high objective uniform state standard of evaluation (HOUSSE) will be brought forth at that time.

## **511 IAC 7-21-1 PARENT & COMMUNITY PARTICIPATION**

An electronic survey was transmitted to 113 directors via the Indiana Special Education Administrator's Services' (ISEAS') list serve. Responses were received from 35 directors (31%).

The survey asked directors if their respective planning districts had established a PAC, committee, task force, or group as permitted under Rule 21 of Article 7. Responses to this question are set forth below:

A "YES" response was received from 9 Cooperatives and 7 Corporations (46% of the respondents).

A "NO" response was received from 15 Cooperatives and 4 Corporations (54 % of the respondents).

A follow-up question asked the respondents who answered "yes" to state how many times during the school year that the PAC met. The responses to this question are set forth below:

- One time per year – 2 planning districts
- Two times per year – 6 planning districts
- Three times per year – 1 planning district
- Four times per year – 3 planning districts
- Five times per year – 0 planning districts
- Six times per year – 4 districts

R. Burden asked for a listing of where parental permission is required in NCLB, PL 221, IDEIA, etc. It would be of more assistance in moving forth with this

language if we knew where all of the requirements for parental involvement for schools exist (and what the specific language states). J. Swaim indicated that parental involvement shifts when looking at elementary, middle school and high school. She would like to see the various age and focal points of the PACs. R. Burden asked whether the survey asked what kinds of tasks these groups actually performed. B. Marra indicated “no”, the survey did not address this question.

Unanimous vote to return to this matter.

### **511 IAC 7-21-2 SP. ED. PROGRAM PERSONNEL**

D. Schmidt said that this gets into some of the issues that we were talking about when we were throwing around all those acronyms prior to the break but Bob assures me that we can probably deal with this.

Early childhood should hold an appropriate license to teach early childhood special education. We interpret licensure from the Code Assignment from the division of Professional Standards, and right now we currently have an elementary, an early child licence, early childhood special education minor, and kindergarten primary k-3 license or any k-12 special education teacher to hold licensure. Most of the language is federal language. They talk about K-12 and do not address early childhood. But the early childhood language has to be read through the code assignment

B. Marra stated that (d) is state code where interpreters must be certified by the division of rehabilitation and we put their code 4060 IAC 2 that we need to have certified interpreters in the school by 2010. It is not really what we are doing; it is already there and we are just pulling from regs already in place and putting them into Art. 7. B. Marra instructed SAC that what we are trying to do with Art. 7 is to have a document where parents, teachers can go to so they don't have to look up other regulations. So if you are uncomfortable with that we don't have to have it in Article 7 but it is already in the books through FSSA.

K. Farrell asked if there is a paraprofessional working in a Title I school but yet working with a non-Title I child, do the requirements at (g) apply? B. Marra said yes, if it is a school-wide or targeted school (and some are district-wide Title I programs).

J. Swiss moved that we accept the language as written at 511 IAC 7-36-2 be approved; seconded by M. Johnson. Motion carried.

### **Additional Article 7 Discussion**

B. Marra asked SAC to review extended school year that one of the things that it says “...meet the standards of the state educational agency” this is the

discussion that we put into Article 7 because it is right out of the regulations. I have no authority to go ahead and make standards without this rule making process. B. Marra asked SAC to read and start generating some questions. B. Marra feels that there should be some standards. There needs to some clarity in the rule with regard to standards for ESY. Funding needs to be discussed also because there is no funding for ESY. B. Marra explained that ESY does not just mean summer school, but extended day, it could mean over the holidays.

J. Hammond asked about the impact of full day kindergarten to half day and how it will impact Article 7 rules. B. Marra said that it will really impact the 12.5 day for half day kindergarten or "5B kids" the advisory board said 12.5 hours before for Art. 7. Because it looked like kindergarten program. B. Marra would like to remove the 12.5 hours because some of the students that get 12.5 do not need it but there are some students that need more do not get it. By doing this kindergarten students would have the right to a full day program. Transportation cost is also an issue.

#### **ARTICLE 7 COMMENTS FROM THE PUBLIC**

No comments were made.

#### **OTHER BUSINESS**

B. Kirk said that she is not comfortable voting on this because the mark-up was received on this date. She stressed the need to have the information before the day of the meeting. B. Marra said that the mark-up would be distributed to the SAC for review sooner than the day of the meeting.

**MEETING ADJOURNED AT 3:05 P.M.**